No. 25-248

IN THE

Supreme Court of the United States

DISTRICT OF COLUMBIA,
Petitioner,

v.

R.W.,
Respondent.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

REPLY BRIEF FOR THE PETITIONER

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December 22, 2025

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

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ARGUMENT

Respondent R.W. and the District of Columbia agree on this much: under decades of this Court's precedents, "an assessment of reasonable suspicion 'must be based upon all the circumstances.'" Br. in Opp'n 11 (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)). But despite acknowledging the totality-of-the-circumstances test, R.W. fights it at every turn. Indeed, R.W. *admits* that the D.C. Court of Appeals "did not include [two] factors in its ultimate weighing of the factors in their totality": the radio dispatch and the unprovoked flight of R.W.'s passengers. Br. in Opp'n 15. That is precisely the "divide-and-conquer analysis" that this Court has prohibited. *United States v. Arvizu*, 534 U.S. 266, 274 (2002). And it is the problem that has generated deep disagreement in the lower courts, including vigorous dissents in each of the four federal circuits on the minority side of the split.

Rather than address the split, or even acknowledge these dissents, R.W. primarily attempts to justify why the D.C. Court of Appeals excised the radio dispatch from its reasonable suspicion analysis. In doing so, R.W. conflates two questions: whether a radio dispatch about a suspicious vehicle *on its own* can justify an investigative stop, versus whether a radio dispatch about a suspicious vehicle can serve as one factor among others that *together* form reasonable suspicion. He makes the same mistake with the unprovoked flight of his two passengers. This analytical defect encapsulates the minority courts' fundamental error: discounting facts that appear innocuous or unsubstantiated on their own without considering them in totality with all the evidence.

The deep split on this recurring and important issue begs for this Court's review—as the chief law enforcement officers of 28 states agree. Okla. Br. 3-5, 14-21. The existing confusion among different courts in a single jurisdiction is untenable. And without clarity, the minority rule forbids officers from considering "the very contextual cues that their training, experience, and safety demand they assess." Fraternal Order of Police Br. 2. It means the officer here needed to turn a blind eye to the obviously suspicious circumstances he confronted. That defies common sense and is the opposite of diligent police work. This Court should grant certiorari, resolve the split, and confirm that courts must consider the totality of the circumstances when considering the existence of reasonable suspicion.

I. There Is An Active Circuit Split.

a. As the District explained, four federal courts of appeals and four state courts of last resort, including the D.C. Court of Appeals below, diverge from this Court's precedents in how they assess reasonable suspicion. Pet. 13-20. Those courts "first assess the legitimacy and weight of each of the factors" in isolation and "excise" any facts that they deem unworthy of inclusion in the analysis. App. 3a, 7a; *see United States v. Frazier*, 30 F.4th 1165, 1178 (10th Cir. 2022) ("[s]tripp[ing]" "innocuous" facts from the analysis). "[T]hen," the courts evaluate only the "remaining facts" in their assessment of the totality of the circumstances. App. 7a, 19a; *accord United States v. Black*, 707 F.3d 531, 542 (4th Cir. 2013) (weighing only the "remaining" facts).

That sequence gets the law backwards, as most courts acknowledge. A court cannot *start* an evaluation of the "totality of the circumstances" by cherry-picking which facts comprise that "totality." And that mistake often determines the result, as this case illustrates. The trial court properly considered all the facts in the record and concluded that the stop was justified. App. 30a-32a, 48a-49a. But the D.C. Court of Appeals made clear that "neither the radio dispatch nor the flight of R.W.'s two companions play[ed] a role in [its] analysis," App. 19a, leading to its conclusion that the stop violated the Fourth Amendment.

b. R.W. argues that the identified split is "a semantic creation" because the courts in the minority sometimes *cite* the totality-of-the-circumstances test. Br. in Opp'n 11. But that ignores what the decisions actually *did*: excise individual facts from the totality *before* considering them in combination with all the other facts. Even the decision below purported to assess the totality of the circumstances; it just defined that totality to omit two of the facts known to the officer on the scene. App. 19a. That linguistic somersault allowed the court to cite this Court's precedents while in practice doing exactly what those precedents prohibit. Notably, R.W. barely engages with the reasoning of the many decisions the District identified as improperly applying a divide-and-conquer approach, and he fails to even acknowledge the many dissents those decisions elicited. *See*, *e.g.*, *United States v. Peters*, 60 F.4th 855, 876-77 (4th Cir. 2023) (Traxler, J., dissenting); *United States v. Monsivais*, 848 F.3d 353, 364 (5th Cir. 2017) (Jones, J., dissenting); *Vasquez v. Lewis*, 834 F.3d 1132, 1140

(10th Cir. 2016) (Tymkovich, C.J., dissenting); *United States v. Patterson*, 340 F.3d 368, 372 (6th Cir. 2003) (Kennedy, J., dissenting).

R.W. next argues that if the identified split were real, the United States would have sought certiorari in one of the cases it lost. Br. in Opp'n 13-14. But the federal government and the states seek review in this Court only sparingly, even if a case meets the Court's certiorari criteria. Adam D. Chandler, *The Solicitor General of the United States: Tenth Justice or Zealous Advocate?*, 121 Yale L.J. 725, 730-31 (2011). Moreover, R.W. ignores the fact that governments *have* sought certiorari on this topic repeatedly—including the United States in *Sokolow* and *Arvizu*, and the District in *Wesby*.

Even less persuasive is R.W.'s contention that the D.C. Circuit's ruling in *Wesby* undermines the strength of the split. Br. in Opp'n 13. *Wesby* departed from earlier D.C. Circuit precedents on the Fourth Amendment and qualified immunity, which is why then-Judge Kavanaugh and other judges vigorously dissented from the denial of rehearing en banc, *Wesby v. District of Columbia*, 816 F.3d 96, 105-09 (D.C. Cir. 2016) (Kavanaugh, J., dissenting), and this Court unanimously reversed. *Wesby* only exemplifies that this Court's intervention is sometimes needed to correct misapplications of Fourth Amendment law. *See Ornelas v. United States*, 517 U.S. 690, 697 (1996) ("[T]he legal rules for probable cause and reasonable suspicion acquire content only through application.").

c. Rather than actually address the faulty reasoning in the many decisions on the minority side of the split, R.W. spends much of his brief arguing

that the D.C. Court of Appeals was correct to exclude the radio dispatch in this case because it could not have contributed anything to the reasonable suspicion analysis. Br. in Opp'n 16-20. But this argument just exemplifies the lower court's error. True, R.W. points to cases holding that when a tip or bulletin is the *only* basis for a stop, it must do all the work in establishing reasonable suspicion. In *United States v. Hensley*, 469 U.S. 221, 231 (1985), for example, the stop was based "merely on a flyer" issued by another police department. *Florida v. J.L.*, 529 U.S. 266, 268 (2000), likewise involved only one anonymous tip. *Arguellez v. State*, 409 S.W.3d 657, 664 (Tex. Crim. App. 2013), similarly concerned a stop based entirely on one call that a person was behaving in a "suspicious" manner.[1]

Here, however, the District did not rely solely on the dispatch call for a suspicious or stolen vehicle. Instead, the call was merely *part* of the factual mosaic known to the officer at the time. When the officer arrived at the identified address at 2:00 a.m., he saw only one vehicle that was occupied; two of its passengers fled unprovoked into the woods at the sight of police; and the driver attempted to drive away with one of the doors fully open. That another person had directed the officer to that location because of a

[1] Cases like *Brown v. Texas*, 443 U.S. 47 (1979), and *United States v. Thomas*, 211 F.3d 1186 (9th Cir. 2000), are even further afield because they involved wholly unsuspicious circumstances. But even *Thomas* approached the analysis the correct way, considering all the factors supporting the stop "in their totality" rather than excluding them as innocuous. *Id.* at 1192.

suspicious vehicle only added to the reasons for the officer to believe that a crime may be occurring.

R.W.'s argument thus only proves the District's point. The D.C. Court of Appeals was wrong to treat the dispatch call as "*irrelevant* to the Fourth Amendment analysis" unless it met the standard for proving reasonable suspicion on its own. App. 10a. Indeed, cases on the majority side of the split have concluded just the opposite—that even vague, anonymous tips to police of suspicious activity can justify a brief investigative stop when corroborated by other evidence that criminal activity is afoot. *See, e.g.*, *United States v. Hightower*, 716 F.3d 1117, 1120 (8th Cir. 2013) ("vague, anonymous emergency call"); *United States v. Harrington*, 56 F.4th 195, 201 (1st Cir. 2022) (call about two individuals asleep in a car); *United States v. McCargo*, 464 F.3d 192, 197 (2d Cir. 2006) (report of a burglary with no suspect description). As the Fraternal Order of Police notes, a contrary approach could lead to all manner of evidence—from tips and dispatches to license-plate alerts and ShotSpotter data—being deemed irrelevant. Fraternal Order of Police Br. 2.

d. R.W. employs a similar tactic with the flight of his passengers. Br. in Opp'n 20-22. He argues that the D.C. Court of Appeals did not invoke any bright-line rules but employed "a quintessentially contextual analysis" in discounting this evidence. Br. in Opp'n 21. That characterization does not square with the decision itself. The D.C. Court of Appeals held unequivocally that a companion's flight can be "relevant" to the analysis only if "the involved parties were engaged in a suspicious joint venture," which it

then defined so narrowly as to exclude the driver and passengers of the same potentially stolen car. App. 11a, 14a.

Treating presence in the same suspicious vehicle late at night as "altogether mundane," App. 14a, defies this Court's teachings. In *Maryland v. Pringle*, 540 U.S. 366 (2003), the only connection between the driver and passengers was their presence in the same "relatively small automobile." *Id.* at 373. This Court explained that "a car passenger . . . will often be engaged in a common enterprise with the driver," making it reasonable to draw a connection between the individuals. *Id.* (quoting *Wyoming v. Houghton*, 526 U.S. 295, 304 (1999)). Here, R.W.'s passengers fled headlong at the mere sight of a police officer and R.W. tried to drive away with the passenger door wide open. Taking all the known facts together, a reasonable officer could conclude that the individuals were desperately disassociating from criminal activity.

Notably, the D.C. Court of Appeals' treatment of passenger flight conflicts with the totality-of-the-circumstances test as applied by courts on the majority side of the split, including the D.C. Circuit. In *United States v. Edmonds*, 240 F.3d 55 (D.C. Cir. 2001), the D.C. Circuit found a stop of a driver was justified after another individual responded to police presence by *walking toward* the vehicle and sitting in the passenger seat. *Id.* at 57. This evidence of "flight" "contributed to a reasonable suspicion that criminal activity might be afoot in the vehicle." *Id.* at 62. The same should have been true here, where two individuals *ran from* a suspicious vehicle. Stops were

justified in both instances, yet *Edmonds* would have come out the opposite way had it been assessed by the D.C. Court of Appeals. *Contra* Br. in Opp'n 22 n.15.

II. The Issues Are Exceptionally Important.

R.W. does not seriously question the importance of the issues presented, nor could he. Ensuring that officers and courts use the proper framework for assessing reasonable suspicion affects one of the most frequent forms of police encounters. Stops like the one at issue in this case—where a reported suspicious or stolen vehicle was backing up toward the officer—present a host of dangers that require quick assessment. *See* Fraternal Order of Police Br. 7, 11-15; *Barnes v. Felix*, 605 U.S. 73, 84-90 (2025) (Kavanaugh, J., concurring). Officers are trained to react based on all the information available; they cannot languidly parse each fact in isolation the way the D.C. Court of Appeals did here. But the decision below and decisions from other jurisdictions like it require police officers to do the unthinkable: turn the other way and ignore an obviously suspicious set of factors when considered in their totality.

Critically, 28 of the nation's chief legal officers recognize the importance of this issue and urge this Court to grant certiorari, describing the confusion the split has generated for law enforcement. Okla. Br. 14-21. And this Court's intervention is especially necessary in the District. In addition to the different methodologies between the D.C. Circuit and the D.C. Court of Appeals—which clouds both local and federal law enforcement activity—the latter court's jurisprudence is now well-entrenched. Pet. 24-26. In a variety of circumstances, the D.C. Court of Appeals

has held that officers must simply walk away from troubling conduct based on a lack of reasonable suspicion: A masked man bikes away from the direction of a ShotSpotter alert and, on seeing police, the man starts biking faster? Officers must walk away. Pet. 24-25. A man matches the description of someone who shot a gun in the air, and he runs when he sees police? Walk away. Pet. 25. A man awkwardly sheds a jacket on a cold day to cover something on a car seat (which turns out to be a gun)? Walk away. Pet. 25. In the District, particularly given competing directions from federal and local courts, this situation is not sustainable.

III. This Is An Excellent Vehicle.

This case presents an ideal vehicle for the Court to remedy the split of authority because the D.C. Court of Appeals unambiguously applied an isolationist approach rather than the comprehensive approach applied by most circuits and state courts. As R.W. readily admits, that divide-and-conquer strategy was a key feature of his briefing below, *see* Br. in Opp'n 6-7, while the District has consistently maintained that all the information should play a part in the court's evaluation of the totality of the circumstances.

R.W.'s arguments that this case is a poor vehicle for resolving the split of authority are groundless. He primarily faults the District for not putting on more evidence of the dispatch call's source, Br. in Opp'n 24-26, but that is hardly a barrier to this Court's review. The division of authority identified in the petition is about the legal test a court should apply to whatever evidence is before it. In any event, R.W.'s demand that the District introduce a 911 call or other

evidence for the radio dispatch to factor into the reasonable suspicion analysis has no basis in precedent and would lead to mini-trials on the genesis of routine dispatch calls. It is just another example of how R.W.'s approach flunks the totality-of-the-circumstances test and defies this Court's admonition that reasonable suspicion is an "obviously less demanding" standard than probable cause. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

R.W. next contends that the District has never argued that the officer's observations, isolated from the dispatch call, would have amounted to reasonable suspicion. Br. in Opp'n 7, 23. That is both inaccurate and irrelevant. At oral argument, the District did maintain that if the officer had not been called to investigate a suspicious or stolen vehicle but had instead stumbled upon the scene, the evidence still would have established reasonable suspicion. Oral Arg. at 36:16-37:00. But more importantly, it is not clear why this issue matters. Under the totality-of-the-circumstances test, *all* the evidence—including the dispatch call—should be considered.

R.W. also attempts to generate factual disputes that would complicate this Court's review. There are none. There is little difference between the officer's unrebutted testimony that he received a dispatch call reporting "a suspicious vehicle or stolen vehicle," App. 42a, and the trial court's factual finding crediting that testimony and stating that he was "responding to a 911 call for a suspicious vehicle," App. 46a. Even if the precise wording of the factual finding were important, it would not matter for the legal question presented here, which is about whether that dispatch

should be included in the totality of the circumstances. Further, there is also no dispute that the vehicle's door was wide open as R.W. attempted to reverse out of the parking space. The trial court specifically found that the open door was one of the facts supporting the officer's decision to stop the car, App. 48a, and it noted that the open door was visible from the officer's body-worn camera and consistent with his testimony, App. 47a.

IV. The Decision Below Is Wrong.

The D.C. Court of Appeals applied the wrong legal test and reached the wrong conclusion about reasonable suspicion. The officer in this case was called to a specific address to investigate a suspicious or stolen vehicle at around 2:00 a.m. Upon arriving at the exact address identified in the dispatch call, he observed only one occupied vehicle in the small parking lot. Two passengers exited that vehicle, spotted his marked police car, and immediately broke into headlong flight, without any provocation. The driver then tried to flee in the vehicle itself, even though one of the doors was still wide open.

This scene bore all the hallmarks of a crime in progress. It is hard to imagine any competent police officer acting differently than the officer here. But by R.W.'s telling, an officer in these circumstances should simply look the other way and let the driver flee down city streets in a stolen vehicle. The Fourth Amendment demands reasonableness, not absurdity. The legal error here was sufficiently "straightforward" to justify summary reversal. *Michigan v. Fisher*, 558 U.S. 45, 48 (2009).

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the judgment below.

Respectfully submitted,

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